

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-338-DB of 2004

Date of Decision : February 19, 2018

Satnam Singh @ Shama and anotherAppellants

Versus

State of PunjabRespondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE DEEPAK SIBAL

Present : Ms. Shubreet Kaur, Advocate
for the appellants.

Mr. I.P.S. Doabia, Additional Advocate General, Punjab.

T.P.S. MANN, J.

The present appeal was filed by convicts-Satnam Singh @ Shama and Sukhbir Kaur for challenging the judgment and order dated 8.3.2004 passed by the learned Sessions Judge, Jalandhar.

Vide impugned judgment and order, learned trial Court convicted Satnam Singh @ Shama appellant under Section 302 IPC and Sukhbir Kaur appellant under Section 302 read with Section 34 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.1,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months.

Facts giving rise to the present appeal are that on 9.8.2001 at 3.30 p.m. Chuhan Singh son of Piara Singh, resident of village Julah Majra, District Nawanshahr made statement Ex.PF before ASI Kewal Singh stating therein that he was an agriculturist by

profession. They were five brothers and all were married. They were living separately from each other and cultivating their respective lands. His younger brother Gurmukh Singh @ Guma had sold his land and also the house falling to his share for a sum of Rs.6,00,000/- and had constructed his own house in village Fatehgarh Lakha, Police Station, Phillaur on a land measuring 13 marlas and living there alongwith his family. The remaining amount was deposited by him in the name of his wife Sukhbir Kaur, sister-in-law of the complainant. Sukhbir Kaur had developed illicit relations with Satnam Singh @ Shama, resident of Julah Majra when she had been residing in that village. Ever since the complainant's brother shifted to village Fatehgarh Lakha, relations of Sukhbir Kaur and Satnam Singh @ Shama became more frequent. Satnam Singh @ Shama used to visit the house of the complainant's brother many times in the presence of her husband. Whenever the complainant went to see his brother, he would apprise him about his wife Sukhbir Kaur having illicit relations with Satnam Singh @ Shama, which he was unable to bear. Whenever the complainant's brother demanded money from his wife to purchase the land, she would call Satnam Singh @ Shama and both of them would give beatings to him and he would express that instead of living a miserable life, he would end his life by consuming some poison. A day before, i.e. on 8.8.2001, the complainant received a telephone call from his brother Gurmukh Singh @ Guma at his house asking him to come and see him at village Fatehgarh Lakha, besides demanding some money for expenditure. On receiving the

call, the complainant and his another brother Amar Nath came to village Fatehgarh Lakha where their brother disclosed them that his life was miserable. His wife did not abstain from maintaining relations with Satnam Singh @ Shama and whenever he demanded money she alongwith Satnam Singh @ Shama would give beatings to him. He was tired of leading such a life and, therefore, it was better for him to die by consuming some poison. The complainant and his brother Amar Nath made him understand and after giving some amount to him, returned home. On 9.8.2001, they received telephone call from Tara Singh, resident of village Fatehgarh Lakha, who told them that their brother had expired. Accordingly, the complainant alongwith his brother and relatives reached village Fatehgarh Lakha where the dead body of Gurmukh Singh was lying on a cot. The complainant had enquired about the matter on his own. He was of firm belief that his brother had died due to harassment at the hands of his wife Sukhbir Kaur and Satnam Singh @ Shama. Accordingly, after leaving Kulwinder Singh at the spot to guard the dead body, he alongwith his brother Amar Nath started for the Police Station to lodge a report. They met ASI Kewal Singh at T-point, Nagar, before whom he got recorded his statement on the aforementioned lines.

It is also the case of the prosecution that as the statement made by the complainant revealed commission of offence under Sections 306/34 IPC, ASI Kewal Singh made an endorsement Ex.PF/1 on the statement Ex.PF and forwarded the same through SPO Sanjay Kumar to the Police Station for registration of a case.

Resultantly FIR Ex.PF/2 was registered on 9.8.2001 at 4.00 p.m., under Sections 306/34 IPC at Police Station, Phillaur against the appellants which was concluded at 4.45 p.m. Special report sent through Constable Lakhwinder Singh was delivered to the Ilqa Magistrate on 9.8.2001 at 6.00 p.m.

During the investigation of the case, ASI Kewal Singh reached the spot and prepared inquest on the dead body of Gurmukh Singh @ Guma, which was, thereafter, sent for post-mortem. The doctor opined that Gurmukh Singh died because of asphyxia resulting from throttling which was sufficient to cause death in the ordinary course of nature. The offence was, accordingly, converted into one under Section 302 read with Section 34 IPC. Satnam Singh @ Shama accused was arrested, who made disclosure statement, pursuant to which he got recovered some clothes from near an electric pole in the fields of Piara Lal.

It is further the case of the prosecution that on 12.8.2001, SI Sarabjit Rai, took up the investigation and after going to village Fatehgarh Lakha, made enquiries from various persons about this case. Avtar Singh son of Jagat Singh made statement under Section 161 Cr.P.C. before him that on 9.8.2001 at night time, when he reached near the house of Gurmukh Singh @ Guma, he had heard the shrieks, on which he went near the gate of the house and saw that Satnam Singh @ Shama was throttling Gurmukh Singh @ Guma by putting a parna around his neck, whereas Sarabjit Kaur was holding him from his arms. Gurmukh Singh @ Guma was not in a

position to speak anything. However, per chance, Avtar Singh came in contact with the gate, at which Satnam Singh @ Shama came out and told him that if he intimidated anyone, he would also meet the same fate as met by Gurmukh Singh. Accordingly, he remained in his house for the night and next morning went to his sister's house at village Chak Sabo, near Apra and when he returned, he narrated the incident to the police. Accordingly, SI Sarabjit Rai raided the house of the accused but they were not available. Satnam Singh @ Shama accused surrendered before the Ilaqa Magistrate on 13.8.2001 and was taken into police custody. Sukhbir Kaur accused was produced on 13.8.2001 before him by her brother and she was arrested. On 13.8.2001, both the accused were interrogated but they did not disclose anything. On 15.8.2001, both the accused were interrogated. On interrogation, Satnam Singh @ Shama accused disclosed that he had kept concealed a pyjama, kurta, safa, and a pillow in the paddy field of Piara Singh and he could get the same recovered. Pursuant to the same, the aforementioned articles were recovered from the designated place and taken into possession.

It is further the case of the prosecution that on 12.8.2001, Sukhbir Kaur accused had made extra judicial confession before Jarnail Singh that she had illicit relations with co-accused Satnam Singh @ Shama, which was being objected to by her husband Gurmukh Singh. For that reason, he had shifted his residence to Fatehgarh Lakha but Satnam Singh @ Shama started coming to her house in that village as well. She further, disclosed that she

alongwith her co-accused Satnam Singh @ Shama had killed Gurmukh Singh @ Guma on the intervening night of 8/9.8.2001 when she had caught hold of him from his arms while her co-accused Satnam Singh @ Shama had wrapped parna around his neck. She had asked him to produce her before the police and, accordingly, he produced her before the police on 13.8.2001.

Upon completion of the investigation and presentation of challan followed by commitment of the case, learned Sessions Judge, Jalandhar charged Satnam Singh @ Shama accused under Section 302 IPC and Sukhbir Kaur accused under Section 302 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined nine witnesses.

PW1 Dr. Jai Krishan, Medical Officer, Civil Hospital, Phillaur deposed that on 10.8.2001, he had conducted post-mortem on the dead body of Gurmukh Singh @ Guma and found the following injuries on the dead body :-

- “1. Concentric abrasion 1.5 cm x 0.5 cm on the front and right side of neck just above the clavicle.
2. Abrasion 1 cm x 1 cm on the front and right side of neck just above and medial to injury No.1.
3. Abrasion 1 cm x 1 cm on the right side of neck just below the right ear.
4. An abrasion 1.5 cm x 1 cm on the front and left side of the neck just above the left clavicle.

5. An abrasion with contusion 5 cm x 3 cm over left side of forehead just above the left eye brow.
6. There is abrasion 2 cm x 2 cm on the right nostril.
7. An abrasion 2 cm x 1 cm on the pinna of the right ear.”

He also deposed that on dissection of the neck, cornua of hyoid bone and superior cornua of thyroid cartilage were found fractured. In his opinion, the cause of death was due to asphyxia, resulting from throttling which was sufficient to cause death in the ordinary course of nature. All the injuries were ante-mortem in nature.

PW2 Constable Lakhwinder Singh, who had taken the special report to the Ilqa Magistrate tendered in evidence his affidavit Ex.PD.

PW3 Jarnail Singh son of Gurnam Singh, resident of village Dhaleta, Tehsil Phillaur, District Jalandhar deposed that he knew Sukhbir Kaur, who was wife of his brother-in-law Gurmukh Singh. On 12.8.2001, she had come to his house in the evening and told him that she had developed illicit relations with Satnam Singh @ Shama and Gurmukh Singh used to object to the same. Sukhbir Kaur and Satnam Singh @ Shama shifted their residence to Fatehgarh Lakha. Satnam Singh @ Shama used to come there also. She further told him that they had killed Gurmukh Singh on the intervening night of 8/9.8.2001. While Satnam Singh @ Shama wrapped a parna around the neck of Gurmukh Singh, she had caught hold of him from his arms and Gurmukh Singh died at the spot. She further told him

that she and Satnam Singh @ Shama committed the murder of Gurmukh Singh in his house at village Fatehgarh Lakha. She requested him to produce her before the police. He replied that he would produce her on the next morning. On 13.8.2001, he produced her before the police. He also deposed about the interrogation of the accused leading to recovery of the clothes on the pointing out of Satnam Singh @ Shama.

PW4 Avtar Singh son of Jagat Singh, resident of village Fatehgarh Lakha deposed that on 9.8.2001 when he was coming from his fields after switching off the engine and it was around mid night, he reached near the house of Gurmukh Singh @ Guma, where he heard the shrieks coming from the side of house. He, accordingly, went to the gate of the house and saw through its chinks that Satnam Singh @ Shama accused was throttling the neck of Gurmukh Singh @ Guma by putting a parna around his neck whereas Jasbir Kaur was holding her husband from his arms. Gurmukh Singh @ Guma was not in a position to speak anything. Per chance, the witness, i.e. Avtar Singh came in contact with the gate at which Satnam Singh @ Shama came out and told him that in case he spoke to anyone he would also meet the same fate as that of Gurmukh Singh @ Guma. He remained in his house for the night and next morning went to his sister's house at village Chak Sabo near Apra. On returning, he narrated the incident to the police.

PW5 Chuhar Singh, brother of the deceased, at whose instance the machinery of law had come into motion, reiterated on

oath all those facts which were narrated by him while making statement Ex.PF.

PW6 SI Sarabjit Rai had partly investigated this case. He deposed that on 9.8.2001, he was posted as SHO, Police Station Phillaur. He took up the investigation of this case on 12.8.2001. He went to village Fatehgarh Lakha, where he investigated this case. He made enquiries from various persons about this case. Avtar Singh made his statement before him and on the said statement, offence was converted into one under Sections 302/34 IPC for which DDR Ex.PG was recorded by him on 12.8.2001. He recorded the statements of the witnesses. The houses of the accused was raided but they were not available. Satnam Singh accused surrendered before the Ilaqa Magistrate on 13.8.2001 and on the same day he was taken into custody by him after taking permission from the Court. Sukhbir Kaur accused was produced before him on 13.8.2001 by her brother and she was also arrested by him. On 13.8.2001, the accused were interrogated but they did not disclose anything. He further deposed that on 15.8.2001, both the accused were interrogated by him. Satnam Singh accused had made disclosure statement that a pyjama, kurta and safa besides a pillow had been kept concealed by him in the paddy field of Piara Singh and he could get the same recovered. The disclosure statement Ex.PH was signed by Satnam Singh accused and attested by the witnesses. Thereafter, Satnam Singh accused led the police party to the disclosed place and got recovered kurta, pyjama, safa and pillow lying in the paddy field near

the electric pole and the same were taken into possession through recovery memo. Ex.PE. Pillow was proved as Ex.P1, kurta Ex.P2, pyjama Ex.P3 and safa Ex.P4. All those articles were sealed in a parcel and were taken into possession. Khes was also got recovered. In the disclosure statement Ex.PH, Satnam Singh had also deposed about the Khes. Then he prepared the rough site plan of the place of recovery Ex.PJ with correct marginal notes. He got the place of recovery photographed. The photographs were Ex.P6 to P9 and negatives were proved as Ex.P10 to Ex.P13. He recorded the statements of the witnesses and after completion of investigation, the accused were challaned by him.

PW7 ASI Kewal Singh deposed that on 9.8.2001, he alongwith some other police officials was present near village Nagar T-point leading towards village Apra in connection with the Nakabandi, when Chuhar Singh complainant came there and made his statement Ex.PF, which was read over to him. He had signed the same in Punjabi after admitting its contents to be correct. Then he made his endorsement Ex.PF/1 and sent the same to the Police Station for registration of the case and on its basis, the case was registered vide FIR Ex.PF/2 by MHC Kulwant Singh, whose signatures he identified as he had seen him writing and signing. Then he alongwith the complainant went to the spot in the house of the deceased. He inspected the spot, and prepared inquest report Ex.PC. He also drafted an application Ex.PB for getting the dead body subjected to post-mortem and sent the dead body through Constable

Tirath Singh and SPO Sanjay Kumar alongwith letter of request Ex.PB. The dead body was identified by Amar Nath and Chuhar Singh. He had also prepared rough site plan Ex.PK which was correct according to the spot. He recorded the statements of Amar Nath and Chuhar Singh in the inquest report. Thereafter, investigation of the case was taken up by SI Sarbjit Rai who was SHO, Police Station, Phillaur.

PW7 ASI Kewal Singh further deposed that on 15.8.2001, the accused were interrogated by SI Sarabjit Rai in his presence. Satnam Singh accused had made disclosure statement that he had kept concealed shirt, trouser, parna/safa, pillow cover and a khes in the field near electric pole in the fields of Piara Singh and offered to get the same recovered. Statement of Satnam Singh Ex.PH was recorded which was signed by him and it was attested by him and the witnesses. Thereafter, Satnam Singh accused led the police party and got recovered pillow cover Ex.P1, kurta Ex.P2, trouser/pyjama Ex.P3, safa Ex.P4 and khes Ex.P5 which were made into sealed parcel and were taken into possession through recovery memo Ex.PE attested by him and Jarnail Singh.

PW8 Satinder Singh, Photographer proved the photographs Ex.P6 to Ex.P9 and negatives Ex.P10 to Ex.P13, which were clicked by his worker Sarabjit Singh at the place of occurrence.

PW9 Tara Singh, Draftsman proved scaled site plan Ex.PL, which he had prepared after visiting the spot on 24.8.2001.

The prosecution gave up MHC Kulwant Singh as

unnecessary whereas PWs Maha Singh, Amar Nath, Avtar Singh and Mohan Singh were given up as having been won over by the accused.

When examined under Section 313 Cr.P.C., the accused pleaded that they were innocent and falsely involved in the case. Satnam Singh @ Shama accused stated that he had been implicated falsely in this case by the relatives of the deceased. Sukhbir Kaur accused claimed to be innocent and took the plea that on the fateful night, her husband was sleeping in the courtyard whereas she herself was sleeping inside the room. On the following morning, she found her husband lying dead on the cot.

In defence, the accused examined DW1 Kewal Singh, who deposed that he knew Gurmukh Singh deceased. He was resident of village Fatehgarh Lakha, which was near his village Maha Singh Jhugian. He resided at his tube-well and not in the village and the said tube-well was at a distance of 5-6 killas from the house of Gurmukh Singh. About two years and three months back he was in his fields. He saw that some persons had gathered near the house of Gurmukh Singh. Then he also reached there to find out the cause. Tara Singh was also there and he had heard him talking that Gurmukh Singh had been murdered but he did not know who had done it.

DW2 Bhajan Singh, resident of Julah Majra deposed that he knew Gurmukh Singh, deceased who was his co-villager. Brothers of Gurmukh Singh were also residents of his village. Gurmukh Singh

had strained relations with his brothers as his brothers used to beat him. As a result, Gurmukh Singh had sold his land in the village and started living in village Fatehgarh Lakha. Satnam Singh accused was not on visiting terms with Gurmukh Singh nor he had any relations with the wife of Gurmukh Singh.

DW3 Kirpal Singh, resident of village Shole Bazar deposed that he knew Gurmukh Singh, deceased. His uncle Malook Singh was also residing in village Fatehgarh Lakha. House of his uncle Malook Singh was at a distance of 20-25 feet from the house of Gurmukh Singh. He had joint cultivation with his uncle Malook Singh and the fields of his uncle Malook Singh were at a distance of four fields from the house of Gurmukh Singh and his own fields were at a distance of six fields from the house of Gurmukh Singh. He was frequently visiting the house of his uncle Malook Singh. About two years and 4-5 months back he had gone to the house of his uncle Malook Singh. In the morning, when he got up he found that a large number of people had assembled and were standing in the street in front of the house of Gurmukh Singh. He knew Tara Singh of village Fatehgarh Lakha who was also standing there and told him that Gurmukh Singh had been murdered by somebody and it was not known who had committed the murder. Police had visited village Fatehgarh Lakha.

After hearing learned counsel for the parties and going through the record, learned trial court believed the prosecution case and convicted and sentenced the appellants, as mentioned above.

This Court has heard Ms. Shubreet Kaur, learned counsel for the appellants and Mr. I.P.S. Doabia, learned Additional Advocate General, Punjab and scanned the evidence with their able assistance.

As per the testimony of PW5 Chuhar Singh, brother of the deceased, Sukhbir Kaur, wife of the deceased had illicit relations with Satnam Singh @ Shama accused which the deceased was unable to bear. In his cross-examination, he deposed that he did not make any report to the Panchayat or the police to prevent Satnam Singh @ Shama from visiting the house of the deceased nor he had suggested the same to the deceased who happened to be his younger brother.

PW4 Avtar Singh was projected by the prosecution to be an eye witness of the occurrence. He had made statement before the police after unexplained delay of four days. His explanation that Satnam Singh @ Shama had told him not to disclose about the occurrence to anyone cannot be accepted. It was his stand before the learned trial Court that on the next morning of the incident he went to his sister's house at village Chak Sabo near Apra where also he did not disclose the incident to anyone. In his statement made under Section 161 Cr.P.C., he had not stated about going to his sister's house. Thus, his explanation of going to his sister's house is a material improvement. Further, PW4 Avtar Singh had deposed that on being attracted to the house of the deceased and seeing through the chinks of the door he had noticed Satnam Singh @ Shama throttling Gurmukh Singh by putting a parna around his neck. Learned trial Court did not believe the prosecution case about the throttling by

Satnam Singh @ Shama with his own hands by observing that there was possibility of the parna being put around the neck of Gurmukh Singh in order to conceal the throttling which was done by Satnam Singh @ Shama with his own hands.

In his cross-examination, PW4 Avtar Singh stated that there were 16-17 houses in the village. Therefore, it was highly unbelievable that none except him would have heard the shrieks raised by Gurmukh Singh. PW4 Avtar Singh tried to give an explanation about the co-villagers in not being attracted to the spot on hearing the shrieks as according to him it was raining at the time of the incident and all the people were sleeping inside. Had it been raining at the relevant time, it was unbelievable that Gurmukh Singh would be sleeping or lying on the cot outside and not inside the room. Further, if it had been raining, there was no occasion for PW4 Avtar Singh to have irrigated his fields as claimed by him.

The statement of PW4 Avtar Singh is also not worth believing qua the involvement of Sukhbir Kaur appellant, who is a handicapped lady and used to walk with the aid of crutches. Thus, it was not possible for her to hold the arms of Gurmukh Singh during the alleged occurrence.

Going by the prosecution case, PW4 Avtar Singh was a chance witness of the occurrence. Though a chance witness may not be false yet it is probably rash to rely upon his testimony, especially when it is not corroborated. Therefore, it would be unsafe to rely upon the testimony of PW4 Avtar Singh.

PW3 Jarnail Singh, brother-in-law of the deceased deposed that on 12.8.2001 Sukhbir Kaur appellant confessed before him that she alongwith Satnam Singh @ Shama had killed Gurmukh Singh. It is highly improbable that Sukhbir Kaur appellant would make extra judicial confession before PW3 Jarnail Singh, who is an interested witness. He also did not know about the death of his brother-in-law until 12.8.2001. He tried to give an explanation about not knowing the factum of death of his brother-in-law and learning about it only on 12.8.2001 by stating that he was away from his village and he came to know of the factum of murder of Gurmukh Singh on 12.8.2001 when the accused came to his house. He also admitted that there were Panches and Sarpanch of the Panchayat of village Kotwalon which had got the jurisdiction over the abadi of village Fatehgarh Lakha. He also stated that there was Panchayat in his own village, i.e Dhaleta. In such a situation, it was highly unlikely of Sukhbir Kaur travelling a distance of about ten kilometers from village Fatehgarh Lakha to reach his village Dhaleta for making extra judicial confession. Position would have been different if she had approached the Sarpanch or Panch of her own village Fatehgarh Lakha or those from the adjoining village Kotwalon. As PW3 Jarnail Singh was none-else but the brother-in-law of the deceased, it can safely be held that he was an interested witness and, accordingly, toeing the line of the prosecution.

PW3 Jarnail Singh deposed that the house of the deceased, i.e. site of occurrence had a boundary wall of 6-7 feet

height and a gate made of steel. The level of the house was one foot higher than the street and someone walking in the passage outside could not see anything inside the house. Therefore, it was well nigh impossible for PW4 Avtar Singh to have noticed anything going on behind the four walls of the house of the deceased.

PW1 Dr. Jai Krishan, Medical Officer, who had conducted post-mortem testified in his cross-examination that keeping in view the separate abrasion on both the sides of the neck it was a case in which the deceased had been throttled by putting pressure on his neck by a hand. Since there was one curved abrasion on one side of the neck and three separate abrasions on the side of the neck, the deceased had clearly been throttled by hand and not by a parna. Thus, there was material contradiction between the medical evidence and the ocular version as stated by PW4 Avtar Singh.

According to PW6 SI Sarbjit Rai, Sukhbir Kaur appellant was produced before him by her brother on 13.8.2001. At the same time, there is testimony of PW3 Jarnail Singh to the effect that it was he who had produced her before the police. He was brother-in-law of Sukhbir Kaur.

In her statement under Section 313 Cr.P.C, Sukhbir Kaur appellant stated that her husband had sold the property at village Julah Majra because he was being maltreated and beaten by his brothers. To escape from their cruelty, he had settled at village Fatehgarh Lakha. Complainant-Chuhar Singh and PW3 Jarnail Singh had falsely implicated her with an ulterior motive. DW2 Bhajan Singh

deposed regarding strained relations with Gurmukh Singh deceased with his brothers who used to beat him. He also stated that Satnam Singh @ Shama appellant was not on visiting terms with Gurmukh Singh. Satnam Singh @ Shama appellant was married and having two children whereas Sukhbir Kaur was handicapped and using crutches to walk. There is nothing on record by way of any report to the Panchyat or police or testimony of any independent witness regarding their illicit relations. On the other hand, it is a clear case of motive on the part of the complainant and others to falsely implicate the appellants, especially when Sukhbir Kaur appellant was to inherit the property of the deceased.

In view of the above, it cannot be said with certainty that it were the appellants who had committed the murder of Gurmukh Singh @ Guma. In any case, extending the benefit of doubt to the appellants would be in order.

Resultantly, the appeal is accepted, impugned judgment of conviction and sentence is set aside and the appellants are acquitted of the charges against them.

The appellants are on bail. The bonds furnished by them shall stand discharged.

February 19, 2018
satish

(T.P.S. MANN)
JUDGE

(DEEPAK SIBAL)
JUDGE

Whether speaking/non-speaking : YES / NO

Whether reportable : YES / NO